

## Message Text

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44

ACTION EB-07

INFO OCT-01 EA-07 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 PM-04 H-02 L-03 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 AID-05 IGA-02 OMB-01

TRSE-00 FMC-01 /072 W

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R 270746Z APR 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4422

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E.O. 11652: N/A

TAGS: EAIR, EWWT, RP

SUBJECT: CIVAIR--GOP DECREES ON AIR PREFERENCES

REF: MANILA 5612

FOLLOWING IS SUBSTANCE OF EMBASSY RESPONSE TO AGCAOILI'S REQUEST FOR VIEWS ON PD 894. WE WOULD APPRECIATE DEPARTMENT'S SUGGESTIONS, AND IF NO OBJECTIONS PERCEIVED WE PLAN TO SEND LETTER BY END OF WEEK.

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SECTION 1 OF PD 894 CONCERNS THE CARRIAGE OF GOODS AND PERSONS FOR OR BY GOVERNMENTAL AGENCIES AND QUASI-GOVERNMENTAL ORGANIZATIONS. MAY GOVERNMENTS RESERVE THE CARRIAGE OF SUCH GOODS AND PERRSONS TO THEIR FLAG AIR CARRIERS AND FLAG VESSELS IF REASONABLY AVAILABLE.

THE LANGUAGE OF SECTION 2, HOWEVER, IS SO BROAD AND SWEEPING THAT IT ENCOMPASSES THE VAST MAJORITY OF, IF NOT ALL, COMPANIES DOING BUSINESS IN THE PHILIPPINES. FURTHER, THE LANGUAGE OF THE SECTION PERMITS THE INTERPRETATION THAT A NON- PHILIPPINE COMPANY LOCATED OUTSIDE OF THE PHILIPPINES BUT HAVING RECEIVED

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A CONTRACT FROM AN ENTITY OF THE GOVERNMENT OF THE

PHILIPPINES WOULD BE REQUIRED TO USE PHILIPPINE FLAG AIR CARRIERS OR SHIPPING LINES, WHETHER UTILIZING CHARTERED FOREIGN FLAG AIRCRAFT OR VESSELS OR THEIR OWN REGISTERED NATIONALFLAG VESSELS, FOR THE MOVEMENT OF GOODS AND PERSONS BETWEEN TWO PLACES, ALTHOUGH BOTH OF THEM MIGHT BE OUTSIDE OF THE PHILIPPINES. SUCH MOVEMENT NEED HAVE NO RELATIONSHIP TO THE PHIOIPPINES OR THE CONTRACT WITH THE PHILIPPINE GOVERNMENT ENTITY, AS THE ONLY ELEMENT IN THE LANGUAGE OF SECTION 2 TRIGGERING THE REQUIREMENT TO UTILIZE PHILIPPINE CARRIERS IS THAT THE PAYMENT FOR SUCH SERVICES BE DIRECTLY OR INDIRECTLY BY SUCH A FOREIGN COMPANY.

THE FOLLOWING ARE SOME EXAMPLES OF QUESTIONS THAT MIGHT ARISE WITH RESPECT TO THE APPLICABILITY OF PD 894. WOULD THE INTERNATIONAL RICE RESEARCH INSTITUTE, A TAX EXEMPT ORGANIZATION BE OBLIGED TO HAVE A RESEARCHER, UTILIZING USAID FUNDING, USE PHILIPPINE AIRLINES? WOULD WESTINGHOUSE, WHICH HAS A CONTRACT WITH THE NATIONAL POWER CORPORATION FOR THE CONSTRUCTION OF THE BAGAC NUCLEAR POWER STATION, BE OBLIGED TO SHIP EQUIPMENT FINANCED BY THE U.S. EXIMBANK IN FOREIGN FLAG VESSELS CHARTERED BY A PHILIPPINE SHIPPING COMPANY? WOULD A JOINT VENTURE HOTEL, THE CONSTRUCTION OF WHICH IS PARTLY FINANCED BY A LOAN FROM THE DEVELOPMENT BANK OF THE PHILIPPINES, BE OBLIGED TO SHIP EQUIPMENT WHICH IS FANANCED BY THE RQUITY INVESTMENT OF ITS FOREIGN INVESTOR ON A SHIP OF A PHILIPPINE SHIPPING COMPANY?

ANOTHER MAJOR ISSUE IS WHETHER THE CONFERRAL OF A SINGLE BENEFIT CREATES AN OBLIGATION FOR ALL TIME AND WITHOUT ANY CONNECTION WITH THAT BENEFIT. ALSO, RECOGNITION SHOULD BE GIVEN TO THE FINANCING BEING PROVIDED BY FOREIGN GOVERNMENTS AND THEIR INSTITUTIONS, AND THIS RECOGNITION WOULD BE DIFFICULT TO RECONCILE WITH THE GENERAL OBLIGATION IMPOSED ON ORGANIZATIONS THAT ARE TAX EXEMPT OR HAVE EXISTING LOAN GUARANTEES FROM THE GOVERNMENT. FINALLY, IF PHILIPPINE TRANSPORTATION IS NOT READILY OR REASONABLY AVAILABLE, THE WAIVER PROCEDURE SHOULD BE EXPEDITIOUS AND SIMPLE TO MEET THE LIMITED OFFICIAL USE

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REQUIREMENTS OF MODERN INTERNATIONAL TRADE. UNQTE SULLIVAN

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
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**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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